

BE BEFORE THE COURT. IT'S ALREADY BEEN HEARD.

IT'S ALREADY BEEN RULED UPON.

IF THEY DON'T BELIEVE THE LETTER IS  
SUFFICIENT, THEN WE NEED TO REQUEST JUDGE JOHNSTON  
TO CLARIFY HIS ORDER.

BUT THAT ASIDE, THE INTERESTING PART ABOUT  
THIS CASE IS, NONE OF US COULD FIND ANYTHING ON  
POINT, THAT A PRIOR ARBITRATION AWARD, THAT WAS  
VACATED OR DISMISSED, IS RES JUDICATA, OR  
COLLATERAL ESTOPPEL OR ANYTHING.

DALE SEARCHED. I SEARCHED. JUDGE INSTRUCTED  
US TO SEARCH AGAIN. THERE WAS NOT ANYTHING SAYING  
THAT.

SO THERE WAS NEVER ANY ISSUE OF RES JUDICATA  
OR COLLATERAL ESTOPPEL.

DALE, ON HIS RESEARCH ON ANOTHER CASE -- I'M  
SORRY. I KEEP REFERRING TO HIM AS DALE, IS THAT  
ALL RIGHT?

THE COURT: SURE. THAT'S FINE WITH ME.

MR. CHAGARIS: DALE CAME ACROSS A CASE THAT  
WAS A MEMORANDUM OPINION OUT OF FEDERAL COURT.  
AND IT WAS REALLY CONTRARY TO EXISTING NORTH  
CAROLINA LAW, BUT THE TREND IN NORTH CAROLINA LAW  
WAS FOLLOWING THAT WAY.

WHAT THE CASE SAID IS, IS THAT THE COURT

LACKED SUBJECT MATTER JURISDICTION IF THERE IS A CLAUSE IN THE CONTRACT CALLING FOR ARBITRATION.

GENERALLY, AS YOU KNOW, THE PREEEXISTING LAW IS, YOU HAD TO AFFIRMATIVELY ASSERTED THE COURT TO STAY PENDING ARBITRATION.

YOU HAD TO MAKE AN AFFIRMATIVE STEP TO GO TO ARBITRATION.

BUT THIS CASE WAS VERY WELL THOUGHT OUT, WELL REASONED CASE.

IT SAID THAT, FROM NOW ON, BASICALLY THE COURTS, FEDERAL COURTS IN NORTH CAROLINA, AREN'T GOING TO ENTERTAIN ANY ACTIONS THAT ARE SUBJECT TO ARBITRATION.

HE FILED THAT MOTION. I BELIEVE IT WAS IN JANUARY -- NO, IT WAS REAL RECENT. WE JUST HAD IT HEARD. JANUARY 18TH.

MR. MORRISON: JANUARY 18TH.

MR. CHAGARIS: THIS WAS BROUGHT BEFORE JUDGE BRIDGES IN FEBRUARY. AND JUDGE BRIDGES ISSUED HIS RULING, BASED ON THE FACT THAT IF IT'S REQUIRED UNDER THE ARBITRATION, WHICH IN THIS AGREEMENT ONLY CERTAIN THINGS ARE SUBJECT TO ARBITRATION; THE ESCROW MONEY AND CERTAIN CONDITIONS.

WHAT JUDGE BRIDGES RULED, AND IN HIS ORDER YOU'LL SEE, IS THAT IF IT WAS COVERED BY THE

CONTRACT, AND THE ARBITRATION, THEN THE COURT'S NOT GOING TO HEAR IT. IT'S NOT VIABLE. IT'S SUBJECT TO THE ARBITRATION.

WHICH I WILL TELL YOU, IS THE FIRST TIME I KNOW OF THAT HAPPENING IN STATE COURT.

THE ORDER WAS DICTATED IN COURT. AND I RELAYED IT TO MY CLIENT, THAT THE JUDGE HAS RULED THIS, BUT THE CONVERSION STILL STANDS.

THE ORDER WAS NOT SIGNED, AND I DID NOT RECEIVE IT UNTIL, I BELIEVE IT WAS THURSDAY. I THINK YOU MAILED IT ON A MONDAY OR TUESDAY, AND I GOT IT ON THURSDAY.

I SENT IT UP TO MY CLIENTS AND SAID, LOOK, THIS IS WHAT THE JUDGE HAS RULED. THIS WHERE WE STAND.

I TOLD THEM, YOU KNOW, WE COULD STILL GO FORWARD, ET CETERA.

BUT I EXPLAINED TO THEM IT WAS JUST A CONVERSION.

THE DECISION WAS MADE TO TAKE A VOLUNTARY DISMISSAL.

THE MOMENT I HEARD I CALLED DALE --  
THE COURT: WHEN YOU SAY DECISION WAS MADE,  
WAS THAT MADE WITH CONCURRENCE OF THE PEOPLE IN  
NEW YORK?

MR. CHAGARIS: YES, SIR. YES, SIR. I HAD TO TALK TO THE CLIENTS OF COURSE.

SO I GOT ON THE PHONE WITH DALE, BECAUSE THIS WAS FRIDAY OF EASTER WEEKEND. SO I IMMEDIATELY CALLED DALE AND I SAID, YOU KNOW, I GOT AUTHORITY TO TAKE A V.D. AND THAT'S WHAT I'M GOING TO DO.

I SAID, THEY'RE TALKING ABOUT REFILING. IF THEY DO, IT'S GOING TO BE THE ATTORNEY UP THERE HANDLING IT. BECAUSE WE'VE SIMPLY GOTTEN DOWN TO A VERY SMALL ISSUE HERE.

THE COURT: YOU'RE THROUGH WITH IT.

MR. CHAGARIS: WELL, THIS CASE, JUDGE, WE HAVE SPENT MORE TIME AND MONEY ON LEGAL ISSUES THAT COULDN'T BE FOUND.

AND NOW THE ISSUE, THE CASE TO CLEAR UP FOR THE COURT, IS ABOUT CHRISTMAS ORNAMENTS. AND THESE FOLKS ARE IN THE CHRISTMAS ORNAMENT INDUSTRY.

AND THE EVIDENCE IS, THAT THEY WERE DENIED ACCESS, PRIOR TO THE TIME FOR THEM TO BE ALLOWED IN THERE. AND THERE'S AN AFFIDAVIT IN THE FILE FROM JANET RIOS (PHONETIC SPELLING) STATING THAT ON OCTOBER 1ST, THE MAJORITY OF THE GOODS WERE REMOVED.

SO A THERE'S A LEGITIMATE ARGUMENT OVER

QUESTION OF FACT OF WHEN PEOPLE WERE ALLOWED IN,  
WHEN THINGS WERE ALLOWED OUT.

BUT THIS ARGUMENT OVER IMPROPER PURPOSE, IT  
DOESN'T HOLD WATER. THE CASE IS SOUND WHEN IT WAS  
FILED, IT WAS SOUND.

WE GO TO THE ISSUE OF, I WOULD LIKE TO CLEAR  
UP THE ISSUE OF THE DEPOSITION.

MR. MANCINI LIVES IN NEW YORK OR NEW JERSEY.  
THEY NOTICED A DEPOSITION.

I CALLED DALE AND SAID, I'VE TALKED TO MY  
CLIENT, HE DOESN'T KNOW THE DAY-TO-DAY EVENTS. I  
SAID, HE'S NOT YOUR DAY-TO-DAY GUY. HE SAYS  
THERE'S A GUY NAMED JOHN CULASAK WHO IS YOUR  
DAY-TO-DAY GUY.

THEY DID NOT, QUOTE, ATTEND THE DEPOSITIONS.  
THERE WAS NEVER A COURT REPORTER THERE. PEOPLE  
DIDN'T SHOW UP IN A ROOM WAITING FOR THESE  
INDIVIDUALS TO SHOW UP. THAT WAS MADE CLEAR.

THEN WE GOT TO THE ISSUE OF JOHN CULASAK WHO  
LIVES IN TEXAS. WE HAD TALKED WITH DATES. HE  
CALLED AT THE LAST MINUTE AND SAID I CAN'T BE  
THERE.

I TOLD DALE, I SAID, I'M EMBARRASSED THIS  
HAPPENED. WE NEED TO DO THIS ON MY CLIENT'S DIME.  
AND I SAID, YOU KNOW, MY CLIENT'S WILLING TO

PAY FOR YOU AND YOUR CLIENT TO COME TO NEW YORK.  
THREW IN A COUPLE TICKETS FOR THE SHOWS. WE'LL DO  
THE DEPOSITIONS UP THERE, AND GO FORWARD.

THEY DID NOT PROCEED TO TAKE ANY ACTION  
FURTHER. THERE WAS NEVER A MOTION TO COMPEL THE  
ATTENDANCE OF THESE WITNESSES. THERE WAS NEVER  
ANY DISCOVERY FILED, REALLY, IN THIS CASE  
WHATSOEVER.

BECAUSE WE WERE -- DALE AND I -- I CAN'T  
SPEAK FOR DALE. THE LEGAL ISSUES WERE SO  
INTRICATE, THAT'S WHAT WE SPENT MOST OF OUR TIME  
ON.

BUT THERE WAS NO IMPROPER PURPOSE THAT I'M  
AWARE OF. I CERTAINLY DIDN'T FILE FOR AN IMPROPER  
PURPOSE.

I THINK THE WORKING RELATIONSHIP BETWEEN DALE  
AND I WAS COMPLETELY PROFESSIONAL, FRIENDLY, AND  
AS HELPFUL TO EACH OTHER AS CAN POSSIBLY BE DONE  
IN THIS SITUATION.

BUT MY FIRST ISSUE IS, THE SANCTIONS ARE  
INAPPLICABLE.

FIRST AND FOREMOST, THERE IS A JUSTICIABLE  
ISSUE.

THE COURT: WHAT IS THAT?

MR. MORRISON: THE CONVERSION.

THE COURT: ALL RIGHT.

MR. MORRISON: AND I WOULD ARGUE THAT THE CONTRACT CLAIMS ARE JUSTICIALE ISSUES AS WELL.

AS HOWEVER THE COURT SAID WE'RE NOT GOING TO HEAR IT. YOU HAVE TO GO TO ARBITRATION.

BASICALLY SAYING, IT'S BARRED BY AN ARBITRATION AGREEMENT DOESN'T MEAN IT'S NONJUSTICIALE. IT JUST MEANS THIS COURT IS NOT GOING TO HEAR IT. IT HAS NO EFFECT AS TO THE VALIDITY OF THE CLAIMS.

IF YOU GO THROUGH JUDGE BRIDGE'S ORDER, THAT'S HOW THE ORDER IS STRUCTURED. HE MADE A VERY DETAILED FINDING ON THAT ORDER.

AND AS A MATTER OF FACT, DALE ACTUALLY GOT THE TRANSCRIPT FROM THAT TO GET THE ORDER CORRECT.

SO FIRST AND FOREMOST, I BELIEVE THE MATTER HAS ALREADY BEEN RULED UPON ABOUT BY JUDGE JOHNSTON AND WE SHOULDN'T BE HERE.

AND SECOND, THEY HAVE NOT MET ANY BURDEN TO SHOW BAD FAITH.

THE COURT: WHAT WAS JUDGE JOHNSTON'S RULING?

MR. CHAGARIS: JUDGE JOHNSTON DENIED -- HE SENT US A LETTER SAYING, I AM DENYING THIS. HE DID NOT REQUEST EITHER ONE OF US TO PREPARE AN ORDER. AND THAT'S PROBABLY MY FAULT FOR NOT

FOLLOWING UP ON IT, BUT BECAUSE THIS CASE --

THE COURT: WHAT WAS HE DENYING?

MR. CHAGARIS: HE SAID, I'M DENYING THE MOTION TO DISMISS.

IT DOES NOT, BY ANYWAY OR MEANS SAY, THE MOTION FOR SANCTIONS. HOWEVER IT WAS HEARD BEFORE HIM. SO IF ANYTHING IT'S PENDING BEFORE HIM. OR HE NEEDS TO CLARIFY TO US HOW HE WANTS THAT ORDER PREPARED.

BUT THE FACT IT'S ALREADY BEEN HEARD AND ARGUED, THAT MEANS IT'S ALREADY BEEN BEFORE THE COURT.

SO I UNDERSTAND PEOPLES' FRUSTRATION WITH LITIGATION. BUT THESE ARE EXPERIENCED BUSINESS PEOPLE IN A NASTY BUSINESS DISPUTE.

THE AFFIDAVIT OF JANET RIOS PRETTY MUCH STATES FROM DAY ONE THEY WERE LOCKED OUT. THEY WERE DENIED ACCESS. AND THAT THEIR GOODS WERE BEING REMOVED FROM THE DAY AFTER CLOSING, BASICALLY, FORWARD. AND THAT'S WHAT THE DISPUTE IS.

WE ACTUALLY HAD TO RESTRUCTURE TRUCKS TO DIFFERENT WAREHOUSES TO DELIVER.

UNDER THIS AGREEMENT WE RETAINED A LEASEHOLD INTEREST, AND HAD THE RIGHT TO CONTINUE LEASING BY

PAYING MONEY.

SO IT'S A JUSTICIALE DISPUTE. AND THIS IS  
WHERE WE'RE AT, JUDGE.

THE COURT: I'M GOING TO ALLOW EACH SIDE ONE  
ADDITIONAL ARGUMENT.

DO YOU WISH TO MAKE AN ADDITIONAL ARGUMENT?

MR. MORRISON: MR. THOMPSON WOULD LIKE TO DO  
IT, YOUR HONOR. I'LL BE HAPPY TO DO, IT THOUGH.

THE COURT: I'LL BE GLAD TO LISTEN TO EITHER  
ONE OF YOU?

MR. MORRISON: DID YOU WANT TO?

MR. THOMPSON: I'M GOING TO DEFER --

THE COURT: MR. THOMPSON SAYS HE'S A LICENSED  
ATTORNEY IN NORTH CAROLINA. AND I DON'T HAVE A  
REASON TO DISBELIEVE THAT. I'VE KNOWN HIM FOR  
SOMETIME.

MR. MORRISON: I'M GOING TO USE THE GOOD  
SENSE THAT I THINK I LEARNED IN LAW SCHOOL. I'M  
PAYING FOR THIS MAN TO REPRESENT ME.

THE COURT: ALL RIGHT.

MR. MORRISON: YOUR HONOR, THE AWARD OF THE  
ARBITRATOR WAS ATTACHED TO OUR THIRD MOTION FOR  
SANCTIONS, WHICH IS THE MOTION BEFORE YOU.

YOU WILL NOTE THAT IN PARAGRAPH, IT'S  
DEFENDANT'S EXHIBIT A TO THAT, THIRD MOTION FOR

SANCTIONS, AND IN THAT IT ADDRESSES IN PARAGRAPH  
3-C, THE \$50,000 SECURITY FUND.

I'M SORRY. THE INVENTORY, IN ADDITION TO THE  
\$50,000 SECURITY FUND DEPOSIT.

SO THAT WAS WHAT THIS DOCUMENT, EXHIBIT A,  
WAS WHAT --

THE COURT: IS THAT A, TO YOUR MOTION?

MR. MORRISON: YES, SIR. TO MY MOTION, THIRD  
MOTION FOR SANCTIONS.

THE COURT: I'M LOOKING FOR THE THIRD MOTION  
FOR SANCTIONS, IN AN EFFORT TO FIND YOUR --

MR. MORRISON: IT SHOULD BE AFTER MY  
VERIFICATION, AFTER MY CERTIFICATE OF SERVICE.

THE COURT: AWARD OF ARBITRATOR?

MR. MORRISON: YES, SIR.

THE COURT: ALL RIGHT. GO AHEAD.

MR. MORRISON: THAT WAS THE DOCUMENT THAT  
PLAINTIFF INITIALLY FILED ATTACHED TO A PETITION  
FOR CONFIRMATION.

AND MR. CHAGARIS PLEASE CORRECT ME IF I  
MISSTATE THAT.

THAT INDICATED THAT THE ARBITRATOR, AT LEAST  
ADDRESSED INVENTORY AS WELL AS THE \$50,000  
SECURITY FUND DEPOSIT.

WHAT THE PARTIES HAD DONE BY CONTRACT, WHICH

ARE ALSO ATTACHED IN THE ESCROW AGREEMENT, AND REFERENCED TO THE CONTRACT FOR PURCHASE OF REAL ESTATE, WAS SAY THAT THESE MATTERS WOULD BE ARBITRATED, IF THE ARBITRATION CLAIM WAS MADE TIMELY.

AND THEY GAVE THEMSELVES A VERY SHORT DEADLINE TO DO THAT.

BECAUSE THE ARBITRATION WAS NOT BROUGHT TIMELY, THE COURT TOOK THE AWARD WE'VE ALREADY HANDED YOU THE ORDER, BUT IT'S ATTACHED TO MY MOTION AS EXHIBIT B.

THE COURT: I'M LOOKING AT THAT.

MR. MORRISON: AND YOUR HONOR CAN READ FOR YOURSELF HOW THE COURT RULED.

NOW I WAS A MATERIAL WITNESS IN THAT CASE. SO I HAD TO WITHDRAW. AND I BELIEVE FRED MONROE OF JAMES, MCELROY AND DIEHL ACTUALLY TRIED THE CASE FOR THE DEFENDANT.

AND IN ANY EVENT, I ATTENDED THE HEARING ON THAT PETITION. AND THE COURT AS INDICATED, DENIED WITH PREJUDICE, THE CONFIRMATION OF THE AWARD AND VACATED IT.

THAT WAS -- MR. THOMPSON WAS THEN SERVED WITH A NOTICE OF APPEAL, WHICH WAS NEVER PERFECTED. AND TO MY KNOWLEDGE WAS NEVER OFFICIALLY DISMISSED

BY COURT ORDER.

THEN SUBSEQUENTLY IN 2003, WE HAVE THE COMPLAINT IN THE INSTANT CASE IN WHICH YOUR HONOR IS HEARING.

IN THAT COMPLAINT, WHICH YOUR HONOR CAN CLEARLY READ, THERE IS SOUGHT, NOT ONLY FOR CONVERSION, BUT THERE IS SOUGHT \$40,800 FOR DAMAGES IN ACQUIRING LEASEHOLD SPACE.

\$23,250 IN DAMAGES OF ACTUAL DAMAGES.

VARIOUS OTHER DAMAGES ARE ALLEGED.

AND THE COMPLAINT, AT LEAST, TALKS ABOUT THE EVENTS OF ARBITRATION.

PARAGRAPH 22 OF THE COMPLAINT SAYS, "THE ARBITRATOR RULED UPON AND ISSUED A WRITTEN AWARD, WHILE LEGAL ISSUES SUBMITTED BY THE PARTIES EXCLUDING DAMAGES TO WHICH THE ARBITRATOR LACKED JURISDICTION.

"A COPY OF THE ARBITRATION AWARD IS ATTACHED HERETO AS EXHIBIT B."

SO PLAINTIFF EVEN KNOWING THAT THE COURT HAD VACATED, STRICKEN, OR HOWEVER YOU WANT, DISMISSED WITH PREJUDICE THE AWARD, AND CITED THE AWARD AS A BASIS TO GO FORWARD IN ITS LAWSUIT.

AND JUDGE JOHNSTON WAS BOTHERED, BECAUSE I FILED INITIALLY, A 12(B)(6) DISMISSAL, BASED ON

THE SIMPLE ARGUMENT THAT THE COMPLAINT ON ITS FACE FAILED TO STATE A CLAIM.

I ALSO FILED ANOTHER MOTION TO DISMISS WITH SANCTIONS.

THE COURT: WHAT IS THE SUBJECT OF THE MOTION TO DISMISS THAT IS --

MR. MORRISON: CURRENTLY BEFORE, YOUR HONOR?

THE COURT: -- THAT IS COVERED IN JOHNSTON'S LETTER TO YOU DATED NOVEMBER 9TH?

MR. MORRISON: TO MY KNOWLEDGE, YOUR HONOR, IT'S THE 12(B)(6) MOTION AND ARGUABLY ANYTHING ABOUT RES JUDICATA OR COLLATERAL ESTOPPEL.

BECAUSE THAT IS WHAT WAS ADDRESSED. WE DID ADDRESS SANCTIONS. BUT HIS LETTER --

THE COURT: THAT WAS WHAT WAS DISMISSED BY LETTER?

MR. MORRISON: DISMISSED BY LETTER. I NEVER GOT AN ORDER. AND QUITE FRANKLY, WITHIN SOMETIME IN DECEMBER, I CAME ACROSS THIS MEMORANDA OPINION. I HAD BEEN GOING, SPENDING DAYS, WHEN I HAD A FEW HOURS, AND LOOKING ON WESTLAW TRYING TO FIGURE OUT WHY WE COULDN'T FIND SOME LAW SOMEWHERE IN THE UNITED STATES ON THIS.

AND LOW AND BEHOLD IT WAS OVER IN THE MIDDLE DISTRICT.

THERE THE COURT SAID, WELL, IF YOU HAVE AN ARBITRATION CLAUSE IN YOUR CONTRACT.

AND I'M CERTAINLY NOT SAYING IT WORD FOR WORD.

BUT THAT THE COURT COULD LACK SUBJECT MATTER JURISDICTION TO HEAR MATTERS THAT WERE TO BE ARBITRATED.

I THINK THAT'S A FAIR RULING AND PROBABLY HAS ALWAYS BEEN THE RULING. THAT'S WHAT HAPPENS WHEN SOMEONE PRESENTS AN ARBITRATION CLAUSE TO A COURT WHERE A CASE HAS BEEN FILED.

IN ANY EVENT, JUDGE BRIDGES THEN HAD A VERY DETAILED LENGTHY HEARING. WHICH I THINK MR. CHAGARIS WOULD AGREE WITH.

AND HAS A VERY DETAILED ORDER. WHICH AS MR. CHAGARIS INDICATED, I, IN AN ABUNDANCE OF CAUTION, GOT A TRANSCRIPT BEFORE I PREPARED THE ORDER TO MAKE SURE THAT I GOT EVERYTHING IN ACCORD WITH HIS DICTATES.

THAT WAS THEN SERVED UPON MR. CHAGARIS. IT WAS SIGNED ON MARCH 21, AND SERVED ON MR. CHAGARIS SHORTLY THEREAFTER. AND AS HE INDICATED, HE DIDN'T GET IT APPARENTLY UNTIL LAST WEEK.

BUT CERTAINLY HIS CLIENT AT THAT POINT KNEW THAT THE ONLY MATTER OPENED WAS THE ARGUMENT OVER

CONVERSION.

THE COURT: WHY DO YOU NOW CONTEND THAT YOU  
ARE ENTITLED TO COST AND FEES?

MR. MORRISON: BECAUSE, YOUR HONOR, WE ARE  
NOW DOING THE SECOND ROUND ON THE ARBITRATOR'S  
AWARD. AND AS I HAVE INDICATED TO THE COURT.

THE COURT: WHAT DO YOU MEAN YOU'RE DOING THE  
SECOND ROUND ON THE ARBITRATOR AWARD?

MR. MORRISON: WELL, THE COMPANY HAWTHORNE  
MILL THAT WAS SUED IN THE FIRST ACTION, FOR THE  
ENFORCEMENT OF THE ARBITRATION AWARD, INSTEAD THE  
ARBITRATION AWARD WAS VACATED AND DISMISSED WITH  
PREJUDICE.

IN THE SECOND ACTION THAT WAS RESURRECTED  
FROM THE DEAD --

THE COURT: THE ARBITRATION ONE?

MR. MORRISON: YES -- YES, YOUR HONOR.  
THAT'S OUR CONTENTION.

IF YOU READ JUDGE BRIDGES' ORDER, YOU WILL  
SEE WHERE HE STRUCK EVERYTHING THAT RELATED TO THE  
ARBITRATION. HE SAYS THAT, OR WORDS TO THAT  
EFFECT. HE CERTAINLY REFERS TO THE ARBITRATION IN  
HIS ORDER.

IF YOUR HONOR DOESN'T HAVE A COPY, I WILL  
MAKE MY COPY AVAILABLE.

THE COURT: THE REASON I'M ASKING ALL THESE QUESTIONS, AS I UNDERSTAND THE THRUST OF THE ARGUMENT, YOU'RE HERE FOR COST AND FEES.

MR. MORRISON: YES, YOUR HONOR.

THE COURT: AND COSTS AND FEES ARE A -- IS SOMETHING THAT THE COMMON LAW DOESN'T KNOW.

MR. MORRISON: THAT IS CORRECT, YOUR HONOR.

THE COURT: IT'S GOT TO BE SOMEHOW OR OTHER BY STATUTE.

MR. MORRISON: YES, YOUR HONOR.

THE COURT: WHAT I WANT TO KNOW FROM YOU, WHAT IS YOUR STATUTORY AUTHORITY THAT WILL ENTITLE YOU TO FEES AND COSTS?

MR. MORRISON: 6-21.5, NONJUSTICIABLE CAUSE OF ACTION BROUGHT ON THE ISSUES THAT WERE DISMISSED WITH PREJUDICE BY JUDGE MARCUS JOHNSON.

AND UNDER RULE 11, AN IMPROPER PURPOSE IN BRINGING THE LAWSUIT AGAIN, KNOWING FULL WELL THAT IT HAD BEEN DISMISSED THE FIRST TIME.

AND, YOUR HONOR, I THINK THE COURT -- AND I BROUGHT THE CASES OR SENT YOU THE CASES. I THINK THE COURT HAS ADDRESSED ISSUES, AND TALKED, FOR EXAMPLE, IN THE MACK VERSUS MOORE CASE UNDER RULE 11. IT NOTES ON THE LAST PAGE OF THAT OPINION, THAT THE COURT CAN LOOK AT THE INFERENCE OF

IMPROPER PURPOSE BY TAKING INTO ACCOUNT THE  
TOTALITY OF THE CIRCUMSTANCES.

YOUR HONOR, TODAY, HAS A DISMISSAL WITH  
PREJUDICE, A SECOND LAWSUIT DISMISSED. PART OF  
THAT LAWSUIT WAS DISMISSED WITH PREJUDICE BY JUDGE  
BRIDGES.

SO IT'S BEEN DISMISSED TWICE WITH PREJUDICE,  
PART OF IT. THE 6-21.5 --

THE COURT: DO YOU HAVE A COPY OF THAT  
STATUTE? WAIT A MINUTE I HAVE IT HERE.

MR. MORRISON: RULE 11 ALSO TALKS ABOUT THE  
SIGNATURE AS A CERTIFICATION OF GOOD FAITH. AND I  
WOULD SUBMIT, YOUR HONOR, THAT PARTICULARLY  
VERIFICATION BY THE PLAINTIFF'S OFFICER, WAS  
FALSE.

AND I WOULD SUBMIT THAT THAT ALMOST MAKES THE  
PLEADING FRIVOLOUS WHEN ONE KNOWINGLY SIGNS A  
DOCUMENT WHICH YOU KNOW IN GOOD FAITH IS NOT  
PROPER.

I AGREE WITH, YOUR HONOR, THAT 6-21.5 THE  
CASE CITATION SAY IT'S A DEROGATION OF COMMON LAW  
AND MUST BE STRICTLY CONSTRUED.

AND I CERTAINLY DON'T ASK YOUR HONOR TO GO  
BEYOND THAT. BUT THE COURT --

THE COURT: THE CASES I'M AWARE OF, AND I

THINK I'M AWARE OF MOST OF THEM, ARE VERY STRICT  
ABOUT AWARDING ATTORNEY'S FEES IN THE ABSENCE OF  
ANY STATUTORY AUTHORITY.

MR. MORRISON: AND I WOULD SUBMIT, YOUR  
HONOR, THAT IN THIS INSTANCE -- EXCUSE ME --

THE COURT: HE SAYS, CHAGARIS SAYS, THAT  
THERE IS A GENUINE CAUSE OF ACTION STATED IN THAT  
COMPLAINT. HE PROBABLY WOULD CONTEND THAT THERE  
ARE MORE THAN ONE.

BUT HE SAYS THERE IS THE ACTION OF TORTIOUS  
CONVERSION --

MR. MORRISON: WELL, YOUR HONOR --

THE COURT: -- THAT HAS MERIT.

MR. MORRISON: AND I WOULD SUBMIT, YOUR  
HONOR, ON THE FACE OF THE COMPLAINT, AND WHAT  
JUDGE JOHNSTON WAS DOING WITH, IT ALL PROBABLY  
APPEARED TO SURVIVE THE 12(B) (6) STANDARD OF  
STATING CLAIM FOR APPROPRIATE RELIEF.

BUT THAT'S NOT TRULY THE STANDARD I WOULD  
CONTEND TO THE COURT THAT 6-21.5, RULE 11 BURDENED  
THE PLAINTIFF WITH.

ONCE YOU GET BEYOND THAT STEP, YOU STILL HAVE  
A DUTY TO MAKE CERTAIN THAT WHEN THE COURT STARTS  
CONSIDERING THE ANSWERS, AND ULTIMATELY THE  
EVIDENCE, THAT YOU HAVE A JUSTICIABLE CLAIM.

THAT'S WHERE THEY FAILED.

THEY FAILED TOTALLY ON THE ISSUE OF THE ARBITRATION CLAIM WHICH JUDGE BRIDGES STRUCK IN A SUMMARY JUDGMENT.

AND I SUBMIT YOUR HONOR, THAT THE REASON THEY TOOK A DISMISSAL, BECAUSE THEY WOULD FAIL ON THE CLAIM OF CONVERSION AS MR. THOMPSON HAS CITED, BOTH FROM THE CONTRACT.

IF YOU DON'T MOVE THE PROPERTY WITHIN TWO WEEKS, IT'S ABANDONED.

THE COURT: WELL LET ME GET DOWN TO BRASS TACKS HERE.

I DON'T HAVE -- I WILL NOT HAVE, ANY PROBLEM AT ALL IN A RULING ON YOUR MOTION FOR FEES AND COSTS.

BUT THE THING THAT BOTHERS ME, IS JUDGE JOHNSTON'S LETTER OF NOVEMBER 9TH, '04. EVEN THOUGH THAT IS NOT IN ORDER FORM, DOESN'T SAY ORDER ON IT.

MR. MORRISON: IT DOES NOT.

THE COURT: IT CERTAINLY INDICATES HIS POSITION.

MR. MORRISON: AS TO THE MOTION TO DISMISS, YOUR HONOR.

THE COURT: YEAH. AND YOU KNOW THAT THERE IS

ALL SORTS OF LAW TO THE EFFECT THAT ONE SUPERIOR COURT JUDGE CANNOT OVERRULE ANOTHER, UNLESS THERE HAS BEEN A SUBSTANTIAL CHANGE IN CIRCUMSTANCES.

I DON'T FIND THAT HERE.

I'M VERY HESITANT TO RULE ON YOUR MOTION, BECAUSE OF THIS LETTER OF JUDGE JOHNSTON.

MR. MORRISON: YOUR HONOR, THERE WAS A CASE THAT I PRESENTED TO THE COURT CALLED BROOKS VERSUS GIESEY.

THE COURT: I SAW THAT.

MR. MORRISON: AND I THINK THERE -- MAYBE IT'S NOT THE CASE I'M THINKING OF.

I THINK WHAT JUDGE JOHNSTON WAS RULING ON, IS NOT WHAT IS BEFORE YOU.

HE WAS RULING ON THE VERY FACT THAT ON THE FACE OF THE COMPLAINT, NOT TAKING INTO CONSIDERATION THE ANSWER, WHETHER THE FACE OF THE COMPLAINT STATED CLAIM UPON WHICH RELIEF COULD BE GRANTED.

AND I SUBMIT, YOUR HONOR, THAT AT THIS STAGE IN THE PROCEEDINGS, WE ARE WELL BEYOND THAT STANDARD.

WE ARE UPON A BROADER STANDARD OF WHETHER THE ISSUES WERE JUSTICIALE. AND WE WOULD SUBMIT, THE LAW SUPPORTS OUR POSITION.

THE OTHER CASE THAT I WAS TRYING TO THINK OF THAT PERHAPS IS EVEN MORE DEFINITIVE, IS THE WINSTON-SALEM WRECKER ASSOCIATION VERSUS BARKER CASE IN 2001. WHICH I BELIEVE USES THE LANGUAGE THAT I'VE BEEN TALKING ABOUT.

IT SAYS, "IN DECIDING WHETHER A PARTY IS ENTITLED TO ATTORNEY'S FEES UNDER N.C.G.S. 6-21.5, THE TRIAL COURT IS REQUIRED TO EVALUATE WHETHER THE LOSING PARTY PERSISTED IN LITIGATING THE CASE, AFTER A POINT WHERE HE SHOULD REASONABLY HAVE BECOME AWARE THAT THE PLEADING HE FILED, NO LONGER CONTAINED A JUSTICIABLE ISSUE."

IT CITES THE SUNAMERICA FINANCIAL CORPORATION CASE WHICH I ALSO PROVIDED TO YOUR HONOR.

SO WHAT I'M SAYING IS, JUDGE JOHNSTON -- JUDGE ROBERT JOHNSTON, OUR SENIOR RESIDENT SUPERIOR COURT JUDGE, WAS LOOKING AT A 12(B)(6) MOTION. AND THAT'S WHAT HE RULED ON.

HE MADE NO RULING ON THE MOTION FOR SANCTIONS WHICH WERE SEPARATE MOTIONS THAT WERE FILED. AND WHICH DEALT PRINCIPALLY WITH DISCOVERY, AND WITH RES JUDICATA.

BUT HE DID RULE ON THE MOTION TO DISMISS. AND IN THAT RULING, HE FOUND WHAT THE LAW REQUIRED HIM TO FIND. HE DIDN'T LOOK AT THE ANSWER. HE

ONLY LOOKED AT THE COMPLAINT.

I'M SAYING THAT WE GOT BEYOND THAT STAGE, AND I SUBMIT, THAT THE PLAINTIFF HAS KNOWN FROM THE VERY BEGINNING THAT ITS RIGHTS WERE ESTOPPED BY ITS OWN WAIVER OF NOT FILING A TIMELY OBJECTION.

I WOULD BE HAPPY TO TRY TO ANSWER ANY OTHER QUESTION YOU HAVE, BUT I THINK I'VE TAKEN ENOUGH OF YOUR TIME.

THE COURT: WELL, DO YOU AGREE WITH MR. CHAGARIS, THAT THERE WOULD STILL EXIST, WERE IT NOT FOR HIS DISMISSAL, VOLUNTARY DISMISSAL OF THE ACTION, THAT THERE WOULD STILL EXIST A CAUSE OF ACTION FOR TORTIOUS CONVERSION?

MR. MORRISON: UNDER THE RULING OF JUDGE BRIDGES, YES. UNTIL WE GET TO THE CLOSE OF HIS EVIDENCE.

THE COURT: NOW THEN, IF THAT IS SO, THEN WE COME TO THE QUESTION OF WHETHER OR NOT YOU ARE ENTITLED TO FEES AND COSTS AFTER HE HAS EXTINGUISHED THE CAUSE OF ACTION HE SAID HE HAD, BY TAKING A DISMISSAL.

MR. MORRISON: I WOULD SUBMIT THAT WE ARE IN PART, UNDER THE, BECAUSE OF THE SUMMARY JUDGMENT ORDER OF JUDGE BRIDGES.

AND AGAIN, ARGUING -- I DON'T WANT TO BEAT A

DEAD HORSE, BUT ARGUING THAT THE COURT CAN, AT THIS STAGE, NOW THAT ALL THE MATTERS ARE DISMISSED, LOOK AT THE TOTALITY OF THE CIRCUMSTANCES OF THIS CASE.

AND THAT CASE WAS ALSO -- THAT WAS THE MACK VERSUS MOORE CASE.

THE COURT: THE TOTALITY OF THE EVIDENCE WOULD LEAD ME TO BELIEVE THAT YOU ARE PROBABLY ENTITLED TO SOME FEES AND COSTS.

THE THING THAT BOthers ME, IS THAT FROM WHAT I HAVE LEARNED, MR. CHAGARIS HAS BEEN USED.

MR. MORRISON: I THINK HE HAS, YOUR HONOR.

THE COURT: AND I DON'T BELIEVE THAT THE COURT IS IN A POSITION TO AWARD OR TAX ANY FEES OR COSTS AGAINST MR. CHAGARIS, OR GRANT ANY RULE 11 MOTION AGAINST MR. CHAGARIS.

MR. MORRISON: YES, YOUR HONOR.

THE COURT: I THINK HE'S A VICTIM OF HAVING TO DEAL WITH NEW YORK PEOPLE, PROBABLY SOME OF WHICH HE DOESN'T KNOW EXCEPT BY TELEPHONE.

AND I SUGGEST TO YOU AND TO HIM, THAT I WOULD THINK THAT YOU WOULD BE GLAD OR JUST BE WAITING WITH BAITED BREATH IF THERE WAS SOME NEW YORK LAWYER TO COME DOWN HERE AND TRY TO RESURRECT THIS THING. I KNOW I WOULD BE GLAD TO SEE THEM COME

DOWN.

MR. MORRISON: IN ONE BREATH I WOULD.

THE COURT: YOU CLEARED UP THE MATTER OF  
JUDGE JOHNSTON'S LETTER FOR ME. I UNDERSTAND THAT  
NOW.

MR. CHAGARIS, WOULD YOU LIKE TO BE HEARD  
FURTHER?

MR. CHAGARIS: YES YOUR HONOR, ONE OF THE  
THINGS, I WOULD LIKE TO HAND UP THE AFFIDAVIT OF  
JANET RIOS --

THE COURT: WHO?

MR. CHAGARIS: THE AFFIDAVIT OF JANET RIOS.  
IT WAS FILED --

THE COURT: IS THIS SOME PERSON FROM ANOTHER  
JURISDICTION?

MR. CHAGARIS: NO, MECKLENBURG COUNTY.  
THIS WAS FILED WITH THE SUMMARY JUDGMENT  
MOTION. THE THING THAT I REQUEST THE COURT LOOK  
AT IS, THEY'RE ASKING YOU JUST TO BASE THEIR  
RULING AND BELIEF ON WHAT THEY THINK.

THE COURT: I'M NOT GOING TO DO THAT.

MR. CHAGARIS: WELL, I KNOW. WHAT I'M  
SAYING, THERE IS NO EVIDENCE, THEY DIDN'T SERVE  
ANY DISCOVERY, THEY DIDN'T DEPOSE THESE PARTIES.  
WHAT THEY'RE SAYING IS, THEY'RE MAD BECAUSE WE GOT

SUED.

I WANT THE COURT TO LOOK AT THE FILINGS,  
JUDGE. BECAUSE UP UNTIL DALE FOUND THAT FEDERAL  
MEMORANDUM OPINION, THE ENTIRE BASIS OF THEIR  
ARGUMENT WAS RES JUDICATA AND COLLATERAL ESTOPPEL.

WHICH THE COURT SAID, NO.

THE CASE THAT THEY CAME OUT WITH, WAS  
SOMETHING THAT'S NOT KNOWN, I WOULD ARGUE, NOT  
KNOWN TO THE GENERAL PRACTICE, AND THE GENERAL  
MEMBERS OF THE BAR, THAT THE FEDERAL COURT HAD  
STARTED DISMISSING ACTIONS FOR LACK OF SUBJECT  
MATTER JURISDICTION.

AND THE TIME WHEN THAT LAWSUIT WAS FILED,  
EVERYTHING IN IT WAS TRUE AND ACCURATE DONE FOR A  
PROPER PURPOSE.

I DON'T THINK YOU'LL FIND ANYTHING IN THE  
PLEADINGS THAT WILL SHOW OTHERWISE.

FURTHER, MAY I HAND UP A CASE WHICH IS VERY  
RECENT ON THE ISSUE OF COSTS?

I HAVE A COPY FOR DALE.

THIS IS A '04 CASE, WHICH TALKS ABOUT WHAT  
THEY ARE SEEKING TO RECOVER, AND WHAT THEY MUST  
PROVE AND SHOW. AND IT CAN'T BE DONE, JUDGE.

THE COURT: I BELIEVE I HAVE READ THIS CASE.  
BUT LET ME CHECK.

MR. CHAGARIS: IT'S PRETTY RECENT. I DIDN'T FIND OUT UNTIL I WENT TO THE WEB SITE THIS WEEK.

THE COURT: I READ THIS CASE ON ADVANCE SHEETS. STEELMAN HAS DONE A GOOD JOB OF OPINIONS SINCE HE'S BEEN ON THE COURT.

NOW THERE IS SOME LAW IN NORTH CAROLINA HOLDING THAT RULE 11 CAN BE EXERCISED BY THE COURT AGAINST A PARTY AS WELL AS A LAWYER.

THERE WAS A CASE ON THAT SEVERAL YEARS AGO. WHERE THE COURT DID IN FACT PENALIZE THE PARTY RATHER THAN THE LAWYER.

I'M GOING TO DENY YOUR RULE 11 MOTION AS TO MR. CHAGARIS, BASED ON THE TOTALITY OF THE PLEADINGS, AND OTHER MATTERS THAT APPEAR OF RECORD IN THE FILE, COURT FILE, NOT BASED ON ARGUMENT OR INNUENDO.

THE PLAINTIFF HAS, IT APPEARS TO ME, EXPLOITED THE COURT HERE WITH ITS -- PARTICULARLY WITH ITS AFFIDAVIT OR VERIFICATION, I BELIEVE THEY CALL IT; VERIFYING THE PLEADINGS.

IT WOULD SEEM TO ME FROM THE DISMISSAL THAT HAS BEEN FILED AND FROM LISTENING TO MR. CHAGARIS, THAT IN THE FINAL ANALYSIS, THE PLAINTIFF DID NOT THINK MUCH OF HIS CAUSE OF ACTION BY HAVING -- BY DECIDING FOR MR. CHAGARIS TO DISMISS IT.

CERTAINLY RAISES THAT INFERENCE.

IN ANY EVENT, THE LAWSUIT NO LONGER EXISTS.

NOW GETTING BEYOND THAT, WHAT IS THE  
DEFENDANT ENTITLED TO BY WAY OF FEES AND COSTS  
UNDER 6-21.5.

THIS RULE 6-21.5 COVERS ABOUT EVERYTHING BUT  
A VOLUNTARY DISMISSAL.

IT SAYS, "FILING OF A GENERAL DENIAL OR  
GRANTING OF ANY PRELIMINARY MOTION, SUCH AS A  
MOTION FOR JUDGMENT ON THE PLEADINGS, A MOTION TO  
DISMISS, A MOTION FOR DIRECTED VERDICT, OR A  
MOTION FOR SUMMARY JUDGMENT IS NOT IN ITSELF  
SUFFICIENT REASON FOR THE COURT TO AWARD  
ATTORNEY'S FEES. BUT MAY BE EVIDENCE TO SUPPORT  
THE COURT'S DECISION TO MAKE SUCH AN AWARD."

I WOULD SAY THAT THE DISMISSAL BY THE  
PLAINTIFF FALLS IN THE CATEGORY AFTER LISTENING TO  
ARGUMENT THAT MAY BE EVIDENCE TO SUPPORT THE  
COURT'S DECISION TO MAKE SUCH AN AWARD.

NOW THE NEXT QUESTION IS, WHAT ARE YOU  
ENTITLED TO, IF FEES AND COSTS ARE TO BE AWARDED.

MR. MORRISON, DO YOU HAVE A MARTINDALE  
RATING?

MR. MORRISON: I HAVE A BV RATING, YOUR  
HONOR.

THE COURT: BV.

MR. MORRISON: YES, YOUR HONOR.

THE COURT: I BELIEVE YOUR AFFIDAVIT SAYS,  
THAT YOUR ORDINARY CHARGES ARE \$250 AN HOUR?

MR. MORRISON: YES, SIR. THAT'S WHAT  
MR. THOMPSON ALSO PAID, YOUR HONOR.

THE COURT: THAT'S WHAT WHO?

MR. MORRISON: MY CLIENT PAID.

THE COURT: PAID YOU?

MR. MORRISON: YES, SIR, YOUR HONOR.

THE COURT: HOW MANY HOURS DO YOU SAY YOU  
HAVE IN CONNECTION WITH THE MANEUVERING BY THE  
PLAINTIFF?

MR. MORRISON: YOUR HONOR, I DIDN'T BREAK  
DOWN THE HOURS EXCEPT BY ATTACHING THE BILLS, THE  
TOTAL BILL WAS FOR \$13,464.36.

THE COURT: THAT FEES AND COSTS BOTH?

MR. MORRISON: FEES, COSTS, BOTH, YOUR HONOR,  
NOT INCLUDING TODAY.

THE BILLS ARE ITEMIZED, YOUR HONOR. AND THEY  
ARE ALL ATTACHED TO THE AFFIDAVIT.

THE COURT: NOW SUPPOSE I WERE TO ISSUE AN  
ORDER ALLOWING YOUR RECOVERY OF FEES AND COSTS;  
HOW ARE YOU GOING TO COLLECT IT?

MR. MORRISON: YOUR HONOR, I THINK IT'S GOING

TO PROBABLY BE ONE OF THOSE THINGS THAT PROBABLY  
IS GOING TO --

THE COURT: AM I GOING TO BE DOING A USELESS  
ACT?

MR. MORRISON: NO, YOUR HONOR. BECAUSE I'M  
GOING TO ALSO ASK YOUR HONOR TO ORDER THAT IT MUST  
BE PAID BEFORE THE PLAINTIFF CAN FILE ANOTHER  
LAWSUIT.

THE COURT: WELL THAT'S THE LAW ANYWAY, ISN'T  
IT?

MR. MORRISON: WELL, I WOULD LIKE IT IN THE  
ORDER, NONETHELESS, YOUR HONOR. IT'S PROBABLY A  
PAPER JUDGMENT, YOUR HONOR.

THE COURT: THAT CAME VERY EARLY IN OUR RULES  
OF CIVIL PROCEDURE. BUT LAWYERS WERE GOING AHEAD  
AND FILING A SECOND ACTION WITHOUT PAYING COSTS IN  
THE FIRST ACTION.

MR. MORRISON: THAT'S CORRECT.

THE COURT: THE COURT FOUND THAT THAT WAS A  
NO, NO, THAT THEY HAD TO DO THAT BEFORE THEY COULD  
PROCEED WITH THE SECOND ACTION.

MR. MORRISON: YOU HAVE TO HAVE A SHOWING OF  
THE COSTS, INCLUDING ATTORNEYS FEES, IN ORDER TO  
REQUIRE THEM TO PAY IT.

THE COURT: I NEED AN AFFIDAVIT FROM YOU, AS

TO HOW MUCH YOU HAVE EXPENDED IN THE WAY OF HOURS.

MR. MORRISON: ALL RIGHT, SIR.

THE COURT: AND WHAT YOUR MARTINDALE RATING IS. WHAT YOU ORDINARILY CHARGE. AND WHAT YOU DID CHARGE. AND WHAT YOU'VE BEEN PAID IN THIS CASE BY MR. THOMPSON OR HIS CORPORATION.

MR. MORRISON: WELL, I THINK IT'S ALL THERE.

THE COURT: IT OUGHT TO ALL BE IN AN AFFIDAVIT.

IN OTHER WORDS, YOU SHOULD CRAFT AN AFFIDAVIT IN ACCORDANCE WITH THE WASHINGTON CASE.

MR. MORRISON: ALL RIGHT, SIR.

THE COURT: WHICH DOES NOTHING MORE THAN, REALLY THAN RECITE WHAT THE FEE AWARDS CAN BE UNDER THE ETHICS RULES. THERE IS AN ETHICS RULE ON FEES.

MR. MORRISON: YES, SIR.

THE COURT: WHAT WASHINGTON DOES IS TRACK THAT ETHICS RULES. SO YOU NEED TO TRACK THAT ETHICS RULE. I'M GOING TO FIND THAT YOU ARE ENTITLED TO THEM.

MR. MORRISON: I'LL REFILE THE AFFIDAVIT.

THE COURT: BASED UPON THE PLEADINGS AND OTHER MATTERS THAT YOU AND THE OTHER SIDE BOTH HAVE FILED IN THIS CASE, I'VE CONSIDERED THEM ALL.

AND WHAT THE GOING RATE IS, FOR A PERSON OF YOUR STATURE IN THIS AREA, IN MECKLENBURG COUNTY AND SURROUNDING AREA.

GIVE A GOOD DESCRIPTION OF THE WORK THAT YOU HAVE PERFORMED. NOT THAT YOU HAD A TELEPHONE CALL WITH MR. THOMPSON ON A PARTICULAR DAY AND IT WAS TWO TENTHS OF AN HOUR. BUT WHAT THE SUBSTANCE OF IT WAS.

AND ALSO THE SAME DESCRIPTION WITH RESPECT TO FEES THAT YOU SAY YOU ARE ENTITLED TO. THEY'VE GOT TO BE COVERED, OF COURSE, UNDER THE STATUTE, ALL THIS STUFF HAS TO BE COVERED UNDER THE STATUTE 6-21.5 IS IT.

SO YOU GOT TO TRACK THE WASHINGTON CASE.  
AND OF COURSE YOU NEED TO LET MR. CHAGARIS LOOK AT IT BEFORE YOU TENDER IT TO THE COURT.

AND I'M MAKING THIS RULING UNDER THE TOTALITY OF THE CIRCUMSTANCES.

IT APPEARS ALSO I WOULD FIND, THAT BY TAKING THIS DISMISSAL OF THE SECOND ACTION, PRESENTS THE COURT WITH SOME EVIDENCE, SOME EVIDENCE OF BRINGING IT FOR AN IMPROPER PURPOSE.

NOW YOU THINK YOU CAN CRAFT AN ORDER FROM WHAT I'VE TOLD YOU?

MR. MORRISON: YES, YOUR HONOR. I'LL MAKE

SURE MR. CHAGARIS AGREES TO IT AS TO FORM.

THE COURT: I KNOW MR. CHAGARIS DOESN'T LIKE  
WHAT I'VE DONE.

BUT MY QUESTION TO MR. CHAGARIS AT THIS TIME  
IS, ARE YOU AGREEABLE TO HAVE THIS ORDER SIGNED  
OUT OF TERM?

MR. CHAGARIS: OF COURSE, YOUR HONOR. THE  
ONE THING I'M NOT CLEAR ON, IS ATTORNEYS FEES THAT  
YOU'RE AWARDING IN THIS ACTION ONLY, OR ARE YOU  
GOING TO ALLOW THEM TO TRY TO GO BACK --

THE COURT: I'M NOT GOING ANY FURTHER THAN  
THIS ACTION. JUST THIS ACTION.

MR. MORRISON: WE HAVEN'T ASKED FOR THE OTHER  
ONE.

MR. CHAGARIS: I WAS TRYING TO CLARIFY FOR MY  
NOTES.

THE COURT: JUST THIS ACTION.

AND YOU SHOULD ALSO INCLUDE A PROVISION IN  
THE ORDER THAT NOTHING THE COURT HAS RULED ON IN  
THIS CASE IS TO IN ANYWAY AFFECT THE RULINGS OF  
ANY PRIOR JUDGES WHO HAVE HEARD MATTERS IN THIS  
CASE, INCLUDING JUDGE JOHNSTON'S LETTER.

I THINK IT APPEARS TO ME, MR. CHAGARIS, THAT  
YOUR CLIENT, USING THE TERM LOOSELY, HAS BEEN  
EXPLOITING NORTH CAROLINA PEOPLE DOWN HERE, AND

MAYBE INCLUDING YOU.

MR. CHAGARIS: YOU KNOW, JUDGE, NOTHING SURPRISES ME IN LIFE. BUT THIS CASE HAS SO MANY DIFFERENT UNDERLYING TONES, I TOLD DALE THE OTHER DAY, THAT I'M SORRY -- OFF THE RECORD.

THE COURT: I DON'T WANT YOU TO SAY ANYTHING IMPROPER.

MR. CHAGARIS: NO. I WOULD ASSERT TO THE COURT I HAVEN'T. THIS IS A BIGGER MESS THAN THIS ONE ISSUE WE'RE DEALING WITH.

THE COURT: YES. IT SOUNDED LIKE IT.

MR. MORRISON: THANK YOU, YOUR HONOR.

(THEREUPON, THAT CONCLUDES THIS HEARING AT THIS TIME.)

C E R T I F I C A T E

STATE OF NORTH CAROLINA )  
                              )  
COUNTY OF MECKLENBURG   )

I, LAURA ANDERSEN, THE OFFICER BEFORE WHOM THE  
FOREGOING PROCEEDING WAS TAKEN, DO HEREBY CERTIFY THAT  
SAID HEARING, PAGES 2 THROUGH 63 INCLUSIVE, IS A TRUE,  
CORRECT AND VERBATIM TRANSCRIPT OF SAID PROCEEDING.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL  
FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO  
THE ACTION IN WHICH THIS PROCEEDING WAS HEARD; AND  
FURTHER, THAT I AM NOT A RELATIVE OR EMPLOYEE OF ANY  
ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES THERETO,  
AND AM NOT FINANCIALLY OR OTHERWISE INTERESTED IN THE  
OUTCOME OF THE ACTION.

THIS IS THE 6TH DAY OF JUNE, 2006.

---

LAURA ANDERSEN, RMR  
OFFICIAL COURT REPORTER  
P.O. BOX 23343  
CHARLOTTE, NORTH CAROLINA  
28227-0272